

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:F:BOS:POSTF-119574-02
BJLaterman

date:

7/25/02

to: [REDACTED] Team Manager
LMSB/FE Group [REDACTED]

from: Associate Area Counsel, Boston
CC:LMSB:FS:Boston

in re: [REDACTED] Inc. & Subsidiaries

Form 872

Taxable Years Ended February 28, [REDACTED] and February 28, [REDACTED]

This is in response to your request dated March, 2002, that we give advice regarding extending the statute of limitations for the above-mentioned consolidated group's taxable years ended February 28, [REDACTED] and February 28, [REDACTED]. This memorandum should not be cited as precedent.

[REDACTED], Inc. ([REDACTED]) [EIN [REDACTED]], a Delaware corporation, was the parent of an affiliated group of corporations which filed consolidated federal income tax return for the taxable years ended February 28, [REDACTED] and February 28, [REDACTED]. In [REDACTED], [REDACTED] transferred substantially all of its operating assets and liabilities to four operating subsidiaries, [REDACTED], Inc. ([REDACTED]), [REDACTED], Inc. ([REDACTED]), [REDACTED], Inc. ([REDACTED]) and [REDACTED], Inc. ([REDACTED]). The greatest amount of [REDACTED]'s assets was transferred to [REDACTED].

On [REDACTED], in connection with a transaction in which [REDACTED] distributed its shares of [REDACTED]'s common stock to its stockholders in a tax-free spin-off transaction, [REDACTED] was merged into [REDACTED], with [REDACTED] as the surviving entity with the same EIN number, [REDACTED]. On the effective date of the merger, [REDACTED]'s name was changed to [REDACTED] Inc. (new [REDACTED]).

Prior to [REDACTED], new [REDACTED] made the decision to distribute [REDACTED] in a tax-free spin-off transaction or otherwise dispose of [REDACTED]. New [REDACTED] also decided to discontinue [REDACTED]'s operations through (1) the assumption of certain contracts and employees of [REDACTED] by new [REDACTED] and

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██████████; (2) the acquisition of a portion of ██████████ by a third party; and (3) the discontinuance of the remainder of ██████████ prior to ██████████. We are unaware of whether the contemplated transactions have occurred. However, it is our understanding that ██████████ now known as new ██████████, is still the common parent of the restructured group.

In the light of the restructuring of ██████████'s operations, you have requested advice regarding the securing of consents, assessment of deficiencies, the captioning of RARS and other actions to protect the government's interest. You have indicated that new ██████████ has sufficient assets to pay all pending and anticipated deficiencies for the years involved herein.

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters related to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Furthermore, the provisions of Treas. Reg. § 1.1502-77(a) shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect to the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary, which was a member of the consolidated group during any part of the consolidated return year, is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

The common parent, ██████████ now known as new ██████████, is still in existence and, therefore, it is the agent for the consolidated group (in existence in the taxable years ended February 28, ██████████ and February 28, ██████████). The caption on the Form 872 should be: ██████████, Inc. (EIN) formerly known as ██████████, Inc. (EIN) & Subsidiaries.* At the bottom of the page you should add: *██████████, Inc. formerly known as ██████████, Inc. & Subsidiaries has executed the Form 872 as agent for the ██████████, Inc. & Subsidiaries consolidated group for its taxable years ended February 28, ██████████.

and February 28, [REDACTED]. Therefore, based on the facts¹ provided we conclude that a Form 872 executed by a current officer of new [REDACTED] formerly known as [REDACTED] the still existing common parent of the group for the taxable years ended February 28, [REDACTED] and February 28, [REDACTED] will extend the period of assessment for said taxable years.

As a final matter with regard to the statute extensions, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual (IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929 (DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treas. Reg. §301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Also, please note that §3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. §6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy the requirement, Publication 1035, "Extending the Tax Assessment Period," must be given when you solicit the statute extension.

Furthermore, we note that since Treas. Reg §1.1502-77(a) provides that the common parent is the agent for the group, the party to receive RARS and the execute consent forms is new [REDACTED]. With regard to assessments, all members of the group during any part of the consolidated return year are liable for tax for the consolidated return years. Since new [REDACTED] has sufficient assets to satisfy all liabilities, assessments against

¹We note that our advice is based on our understanding that [REDACTED], Inc. formerly known as [REDACTED] Inc. from whom you will solicit the extension is the same corporation that was the common parent for the taxable years ended February 28, [REDACTED] and February 28, [REDACTED].

the existing group should be sufficient to protect the government's interest.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If we can be of any further assistance, the undersigned can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant